

Palaniappan a/l Kotayan v Universiti Putra Malaysia

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HIGH COURT (MELAKA) — CIVIL SUIT NO S7-22-137 OF 1992
NOOR AZIAN SHAARI JC
11 MAY 2007

B

*Labour Law — Employment — Dismissal — Employee charged for theft —
Claim for wrongful dismissal — Whether plaintiff had breached proper procedure*

C

*Labour Law — Employment — Dismissal — Claim for wrongful dismissal —
Whether plaintiff had been accorded right to be heard*

D

The plaintiff was employed by the defendant at the Unit Ternakan Ayam. The plaintiff and his wife were riding a motorcycle when they were stopped and asked for a bill for the eggs carried by the plaintiff's wife. The plaintiff was charged by the defendant for misconduct in taking out eggs with the intent to misappropriate the same from the defendant. The plaintiff was summoned to a disciplinary inquiry and was thereafter dismissed by the defendant. The plaintiff appealed to the Vice Chancellor of the university in accordance with the appeal procedure. The appeal was dismissed. The plaintiff commenced proceedings claiming inter alia a declaration that the dismissal was wrongful and without just cause/excuse and general damages for wrongful dismissal.

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Held, dismissing the plaintiff's claim with costs:

- (1) From the evidence, both the plaintiff and PW2 (plaintiff's wife) were leaving on a motorcycle and on being stopped by the guard they were unable to produce documents to prove that the eggs they were carrying were lawfully obtained. PW2 returned to the farm to obtain the bill. For whatever reason the bill was not obtained earlier is irrelevant. The fact is that both plaintiff and PW2 had taken eggs out from the farm not in accordance with proper procedure/practice laid out. As such the third 'Issues To Be Tried' raised by the plaintiff i.e. 'What is the procedure in the defendant's farm if the employee wants to purchase eggs?' is irrelevant as whatever the procedure is the plaintiff had breached it (see para 12).

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- A (2) The plaintiff's assertion that it was his wife, PW2 who took the eggs is an afterthought. The plaintiff in cross-examination said that he never told the Disciplinary Board that PW2 had taken the eggs until he was found guilty. Further in the plaintiffs reply to the charge by the letter of 24 October 1985, the plaintiff did not mention or claim that his wife took the eggs. As such the question of the wrong person being disciplined does not arise at all (see para 13).
- B
- C (3) The letter of 7 February 1986 was only a follow up and not an appeal and as such even if it was not considered by the defendant, it was rightly so. The appeal itself was duly considered (see paras 14 & 17).
- (4) The disciplinary action taken against the plaintiff was in order, he was given right to be heard and to explain. After the decision of the Disciplinary Board, he was informed of his right to appeal which he did so. The appeal was then duly considered but rejected (see para 18).

D

[Bahasa Malaysia summary]

- E Plaintiff telah diambil bekerja oleh defendan di Unit Ternakan Ayam. Plaintiff dan isterinya sedang menunggu motosikal apabila mereka diberhentikan dan disoal berkenaan dengan bil telur yang telah dibawa oleh isteri plaintiff. Plaintiff telah dituduh oleh defendan bagi salah laku iaitu mengambil telur dengan niat menyalahgunakannya daripada defendan. Plaintiff telah dipanggil untuk satu siasatan disiplin dan kemudiannya dipecat oleh defendan. Plaintiff telah merayu kepada Naib Chansellor universiti berdasarkan prosedur rayuan. Rayuan tersebut telah ditolak. Plaintiff telah memulakan prosiding menuntut antara lain satu perisytiharan bahawa pemecatannya adalah salah dan tanpa sebab/alasan yang adil dan gantrugi am untuk pemecatan salah.
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Diputuskan, menolak tuntutan plaintiff dengan kos:

- (1) Berdasarkan keterangan, kedua-dua plaintiff dan PW2 (isteri plaintiff) telah pergi dengan motosikal dan setelah diberhentikan oleh pengawal keselamatan, mereka gagal mengemukakan dokumen bagi membuktikan bahawa telur-telur yang dibawa oleh mereka adalah didapati secara sah. PW2 telah kembali ke ladang bagi mendapatkan bil. Untuk sebarang alasan sekalipun bil gagal diperolehi pada peringkat awal adalah tidak relevan. Fakta bahawa plaintiff dan PW2 telah mengambil telur-telur keluar daripada ladang adalah tidak menurut prosedur/amalan yang betul yang telah digariskan. Oleh itu 'isu-isu untuk dibicarakan' ketiga yang dibangkitkan oleh plaintiff iaitu 'Apakah prosedur di dalam ladang defendan jika pekerja ingin membeli telur-telur?' adalah tidak relevan kerana apa-apa prosedur sekalipun plaintiff telah melanggarnya (lihat perenggan 12).
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- (2) Kenyataan plaintif bahawa isterinya, PW2 yang telah mengambil telur-telur adalah satu fikiran semula. Plaintif dalam pemeriksaan balas mengatakan bahawa beliau tidak memaklumkan Lembaga Disiplin bahawa PW2 telah mengambil telur-telur sehinggalah beliau didapati bersalah. Selanjutnya jawapan plaintif kepada pertuduhan melalui surat bertarikh 24 Oktober 1985, plaintif tidak menyebut atau mendakwa bahawa isterinya yang telah mengambil telur-telur. Oleh itu persoalan orang yang salah telah dikenakan tindakan disiplin sama sekali tidak akan timbul (lihat perenggan 13). A
- (3) Surat 7 Februari 1986 hanya satu surat susulan dan bukan rayuan dan oleh itu walaupun jika ia tidak dipertimbangkan oleh defendan, ia adalah betul. Rayuan itu sendiri telah dipertimbangkan sebagaimana sepatutnya (lihat perenggan 14 & 17). B
- (4) Tindakan disiplin yang diambil terhadap plaintif adalah teratur, beliau telah diberikan hak untuk didengar dan juga memberikan penjelasan. Selepas keputusan Lembaga Disiplin, beliau telah dimaklumkan akan hak-haknya untuk merayu yang mena beliau telah berbuat sedemikian. Rayuan telah pun dipertimbangkan sebagaimana sepatutnya tetapi telah ditolak (lihat perenggan 18).] C

Notes D

For cases on dismissal, see 8 *Mallal's Digest* (4th Ed, 2006 Reissue) paras 920–953. E

Cases referred to F

Haji Ali Haji Othman v Telekom Malaysia Berhad [2003] 3 MLJ 29 (refd)
Mohd Ahmad v Yang Dipertua Majlis Daerah Jempol, Negeri Sembilan & Anor [1997] 2 MLJ 361 (refd)

Legislation referred to G

Universiti Pertanian Malaysia (Discipline of Staff) Rule 1979 r 4(2)(f)

Mohan Ghandi (Mohan Ghandi & Co.) for the plaintiff.
Anita Sockalingam (Zain & Co) for the defendant.

Noor Azian Shaari JC: H

[1] The plaintiff, Palaniappan filed the writ and statement of claim against the defendant, Universiti Pertanian Malaysia for the following reliefs: I

- (i) a declaration that the dismissal was wrongful and without just cause an excuse;
- (ii) general and special damages for wrongful dismissal and/or reinstatement with all fringe benefits;

- A (iii) all necessary and consequented remedies;
(iv) costs;
(v) any such further as other reliefs as this honourable court deem fit.
- B [2] The plaintiffs pleaded case as in the statement claim is as follows:
(1) The plaintiff claims that he was wrongfully dismissed by the defendant without just cause or excuse;
(2) The plaintiff had been charged twice by the defendant, wherein the original charge was subsequently withdrawn and a new charge formulated. The new charge reads as follows:
- C Bahawa tuan, Palaniappan a/l Kotayan, sebagai seorang kakitangan Universiti Pertanian Malaysia telah melakukan pelanggaran tatatertib di bawah k 4(2)(f) Kaedah-Kaedah Universiti Pertanian Malaysia (Tatatertib Kakitangan) 1979 iaitu berlaku curang dengan cara membawa keluar dari Unit Ternakan Ayam Penghasilan 120 biji telur ayam kepunyaan Universiti Pertanian Malaysia daripada Unit Ternakan Ayam Penghasilan tanpa kebenaran daripada pihak berkuasa Universiti pada 7 Ogos 1985 lebih kurang pukul 12 tengahari.
- D
- E (3) The plaintiff was summoned to a disciplinary inquiry on 6 January 1986. Following the same, the defendant decided to dismiss the plaintiff via their letter of 9 January 1986.
- F (4) The plaintiff contends that he then appealed in accordance with the appeal procedure to the Vice Chancellor of the University against the dismissal of the plaintiff, via two letters:
- G (i) firstly, letter dated 15 January 1986 which was written by Encik Abdul Razak Jaafar; and
(ii) a follow up letter dated 7 February 1986 explaining the actual circumstances.
- H (5) The defendant via a letter dated 3 March 1986 dismissed the appeal by the plaintiff and the plaintiff alleges that the defendant had failed to take into consideration the letter dated 7 February 1986.
- I [3] The defendant raised the following defences:
(1) The defendant contends that the plaintiff had been dismissed from the defendant's service effective 9 January 1986 after due and proper disciplinary process.

- (2) By way of the defendant's letter dated 12 September 1985 (exh P5), the plaintiff was notified to attend the disciplinary proceedings on 8 November 1985 for an enquiry of the charge made against him. **A**
- (3) The charge originally brought against the defendant was withdrawn on 8 November 1985 and by way of the defendant's letter dated 4 December 1985 (exh PS), the plaintiff was notified of the fresh charge brought against him and to attend the disciplinary proceedings on 6 January 1986 for an inquiry of the charge brought against him. **B**
- (4) The plaintiff was given adequate opportunity to adduce evidence and/or to cross-examine witnesses during the disciplinary proceedings on 6 January 1986 in order to refute the charge made against him. **C**
- (5) The defendant had received the plaintiff's letter of appeal dated 15 January 1986 (exh P10) and it was considered by the defendant in accordance with the Universiti Pertanian Malaysia (Discipline of Staff) Rules 1979 ('UPM rules'). The defendant had also received a letter dated 7 February 1986 (exh P11) but as it was submitted outside the 10-day appeal period provided for in the UPM rules, the defendant was unable to take exh P11 into consideration. The decision on the plaintiff's appeal was conveyed to him via the defendant's letter dated 3 March 1986 (exh P12). **D**
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- (6) The defendant contends that there was sufficient cause for the dismissal of the plaintiff and that the said dismissal was in accordance with the law and the statutory provisions applicable to the plaintiff as an employee of the defendant, namely the provisions of the UPM rules made pursuant to the Universities and University Colleges Act 1971. **F**
- [4] The statement of agreed facts is marked as exh 'C' and it is agreed only as follows: **G**
- The plaintiff was at all material times an employee of the defendant.
- [5] The plaintiff submitted the 'issues to be tried (marked as exh 'D1') as follows: **H**
- (1) Can the defendant institute proceedings against the plaintiff for the wrongs [if any] which is committed by the plaintiff's wife?;
- (2) Can the defendant ignore the most important follow up letter dated 7 February 1986 by the plaintiff; **I**
- (3) What is the procedure in defendant's farm if the employee wants to purchase eggs?;

- A** [6] The defendant on the other hand submitted its ‘issues to be tried’ and it was marked as exh ‘D2’. They are:
- (1) Whether the plaintiff was dismissed wrongfully and without just cause or excuse.
- B** (2) Whether the defendant ought to have taken the plaintiffs letter of 7 February 1986 into consideration.
- (3) Whether the plaintiffs claim disclose a valid cause of action.
- C** (4) Whether the plaintiff may obtain the relief sought for from this honourable court.
- (5) Whether the plaintiffs prayer for special damages should be struck out for being disallowed by the Supreme Court on 3 September 1996.
- D** [7] The plaintiff called three witnesses being:
- (i) PW1, the plaintiff himself;
 - (ii) PW2, Sinnamah a/p Krishnan, wife of the plaintiff; and
- E** (iii) PW3, Mohd Yusof bin Yob, a former employee of the defendant.
- [8] The defendant also called three witnesses being:
- (i) DW1, Shahadan @ Shahdan bin Asri, a former employee of the defendant and at the material time was the Pengurus in the Unit Ternakan Ayam;
- F** (ii) DW2, Abdul Razak bin Jaafar a former employee of the defendant and at the relevant time was the Pengurus Unit Ternakan Ayam; and
- G** (iii) DW3, Mohd Nawawi bin Daud an employee of the defendant and at the material time was the Pembantu Makmal Ladang.
- [9] Since the parties would not agree on the issues to be tried and instead each submitted their own, looking at both the ‘issues to be tried’, exh D1 and
- H** D, I would simply sum up that the issue is whether the plaintiff was dismissed wrongfully or without just cause or excuse.
- [10] The brief facts of the case which are undisputed are as follows:
- I** (1) The plaintiff and his wife PW worked at the Unit Ternakan Ayam of Universiti Putra Malaysia at the material time, 7 August 1985;
- (2) At the material time, the plaintiff and PW2 were riding on a motorcycle when they were stopped by the guard who asked for the bill for eggs carried by PW2;

- (3) PW2 went back to the farm and obtained the bill from DW3 (P4); **A**
- (4) The plaintiff received the defendant's letter of 12 September 1985 (P5) wherein he was asked to attend a domestic inquiry fixed on 4 November 1985;
- (5) The charge was under r 4(2)(f) of the Universiti Pertanian Malaysia (Discipline of Staff) Rule 1979 for 'berlaku curang dengan cara membawa keluar dari Unit Ternakan Ayam Penghasilan 120 biji telur ayam yang tuan katakan retak tetapi sebenarnya tidak retak dengan tujuan menipu Universiti pada 7 Ogos 1985 lebih kurang 12 tengahari; **B**
- (6) The plaintiff replied to the charge by letter of 24 October 1985 (P6); **C**
- (7) The inquiry was postponed from 4 November 1985 to 8 November 1985;
- (8) On 8 November 1985, the charge was withdrawn (D14); **D**
- (9) By a letter dated 4 December 1985 (P8) the plaintiff was informed that he will be charged for 'berlaku curang dengan cara membawa keluar 120 biji telur ayam kepunyaan Universiti Pertanian daripada Unit Ternakan Penghasilan tanpa kebenaran daripada pihak berkuasa Universiti pada 7 Ogos 1985 lebih kurang pukul 12 tengahari; **E**
- (10) The inquiry proceeded on 6 January 1986 and the plaintiff was found guilty and by letter of 9 January 1986 (P6) the plaintiff was informed that he was dismissed;
- (11) By a letter dated 15 January 1986 (P10) the plaintiff appealed to the Vice Chancellor of the University; **F**
- (12) Vide a letter of 7 February 1986 (PI 1) the plaintiff sent a follow-up letter explaining the actual circumstances;
- (13) The defendant by a letter dated 3 March 1986 (PI2) dismissed the appeal. **G**

[11] Now to examine if the plaintiff was wrongfully dismissed by the defendant without just cause or excuse. In order to do that I would deal with the following issues raised by the parties. **H**

Can the defendant institute proceedings against the plaintiff for the wrong (if any) which is committed by the plaintiff's wife?

[12] From the evidence, both the plaintiff and PW2 (plaintiff's wife) were leaving on a motorcycle and on being stopped by the guard they were unable to produce documents to prove that the eggs they were carrying were lawfully obtained. PW2 returned to the farm to obtain the bill. For whatever reason **I**

- A the bill was not obtained earlier is irrelevant. The fact is that both plaintiff and PW2 had taken eggs out from the farm not in accordance with proper procedure/practice laid out. As such the third 'Issues To Be Tried' raised by the plaintiff ie, 'What is the procedure in the defendants farm if the employee wants to purchase eggs?' is irrelevant as whatever the procedure is the plaintiff
- B had breached it.

- C [13] I find that the plaintiffs assertion that it was his wife, PW2 who took the eggs is an afterthought. The plaintiff in cross-examination said that he never told the Disciplinary Board that PW2 had taken the eggs until he was found guilty. Further in the plaintiffs reply to the charge by the letter of 24 October 1985 (P6), the plaintiff did not mention or claim that his wife PW2 took the eggs. As such the question of the wrong person being disciplined does not arise at all.

- D *Can the defendant ignore the follow up letter dated 7 February 1986 most important by the plaintiff?*

- E [14] The letter of 7 February 1986 referred to by letter by the plaintiff explaining the actual the plaintiff is P11, a follow up circumstances.

- F [15] Vide the letter of 9 January 1986 (P9) the plaintiff was informed of the reason of the Disciplinary Board and that he had a right of appeal by filing a notice within ten days from 9 January 1986.

- G [16] The plaintiff wrote a letter (appeal) dated 15 January 1986 (P10). It must be noted that vide D16, letter from defendant to the plaintiff, the plaintiff was informed that his appeal had been sent to the defendant's Majlis for consideration. Subsequently, by a letter of 3 March 1986 (P12) the plaintiff was informed that his appeal by letter of P10 was considered but rejected.

- H [17] As such, the appeal was duly considered and rejected. The letter of 7 February 1986 (P11) was only a follow up and not an appeal and as such even if it was not considered by the defendant, it was rightly so. The appeal itself (P10) was duly considered.

- I [18] Under the circumstances I find that the disciplinary action taken against the plaintiff was in order, he was given right to be heard and to explain. After the decision of the Disciplinary Board, he was informed of his right to appeal which he did so. The appeal was then duly considered but rejected.

[19] In *Haji Ali Haji Othman v Telekom Malaysia Berhad* [2003] 3 MLJ 29 it was stated that:

it was not the court's duty to exercise its power as an appellate court, but merely to see if the plaintiff was *properly heard* and whether there was mala fide on the part of the defend in taking the action and the decision arrived at. (Emphasis added.)

As such I dismissed the plaintiffs claim with cost.

[20] The plaintiff had abandoned his prayer for reinstatement and only proceeded to claim for damages. I would now have to examine in the event the plaintiff is successful in the appeal whether he is entitled to be awarded damages. I am of the opinion that the answer would be in the positive. The Registrar then may be directed to assess the amount with the guidance of documents in the form of salary scale of the plaintiffs scheme of service which would be available from the defendant. In the case of *Mohd Ahmad v Yang Dipertua Majlis Daerah Jempol, Negeri Sembilan & Anor* [1997] 2 MLJ 361 Peter Swee Chen PCJ said:

A clear distinction has to be made between a declaration that a dismissal is invalid and void on the one hand and on the other hand, a declaration that the dismissal is wrongful. The first-mentioned declaration may be granted by the Court with what in effect is a reinstatement, ie, that he continues in the employ etc. the secondly mentioned-declaration is invariably granted with an order for damages only by virtue of the said principle. *When a dismissal is merely wrongful, at some risk of repetition, a plaintiff is left only with a remedy in damages* by virtue of the said principle. When a dismissal is void, or invalid, the dismissal that took place earlier never in effect, effectively took place because it is void, so the old job continues. To see things in their better perspective, let us save that a void or invalid dismissal is always wrongful, but not every wrongful dismissal is an invalid or void dismissal. (Emphasis added.)

[21] Therefore, since the plaintiff is claiming that the dismissal is 'wrongful and without just cause or excuse' the correct remedy would be damages in the event his appeal is allowed.

Plaintiff's claims dismissed with costs.

Reported by Brendan Navin Siva

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